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Onorina Z. Maloney, CMMC

**CERTIFICATE OF VOTE  
ARTICLE 28**

**May 3 adjourned session of April 30, Annual Spring Town Meeting**

I, Onorina Z. Maloney, Town Clerk of Chelmsford, Massachusetts do hereby certify the following vote taken under Article 28 at the May 3 adjourned session of the April 30, 2012 Annual Spring Town Meeting held at the Chelmsford Senior Center 75 Groton Road, North Chelmsford. The meeting was called to order at 7:30 pm by Moderator Richard DeFreitas. There were 119 Town Meeting Representatives in attendance which satisfied the quorum of 82.

**ARTICLE 28. Planning Board Chair, Colleen A. Stansfield, moves e that the Town amend the Town Code, Chapter 195, "Zoning Bylaw", for the purposes of revising section 195-8, "Nonconforming uses and structures" as printed in Article 28 of the warrant for this Annual Town Meeting and published on pages 65 – 67 in the Finance Committee Report, Recommendations and Copy of the Warrant for the Spring Session of Annual Town Meeting dated Monday, April 30, 2012 that has been distributed to the Town Meeting Representatives. (Please see attached)**

Finance Committee has no recommendation on Article 28  
Board of Selectmen recommends Article 28  
Planning Board recommend Article 28

The electronic voting devices recorded the following votes:

**YES: 121**

**NO: 19**

**YES: 1**

**Article 28 carries by 2/3 vote**

*Onorina Z. Maloney*

Onorina Z. Maloney, Town Clerk

**ARTICLE 28.** To see if the Town will vote to amend the The Town Code, Chapter 195, "Zoning Bylaw", for purposes of revising section 195-8, "Nonconforming uses and structures", by deleting the language shown in ~~strike through~~ and adding the language shown as underlining, as follows:

**§ 195-8 Nonconforming uses and structures.**

A. Applicability. This chapter shall not apply to structures or uses lawfully in existence or lawfully begun or to a building or special permit issued before the first publication of notice of the public hearing required by MGL c. 40A, § 5 at which this chapter, or any relevant part thereof, was adopted. Such prior lawfully existing nonconforming uses and structures may continue, provided that no modification of the use or structure is accomplished, unless authorized hereunder. For the purposes of § 195-8B and § 195-8C, the Board, of Appeals shall be the special permit granting authority for single- and two-family dwellings and the Planning Board shall be the special permit granting authority for all other uses and structures, including multifamily and nonresidential uses and structures.

[Amended 10-20-2008 ATM by Art. 12]

B. Nonconforming uses. The Board of Appeals or the Planning Board, as applicable, may award a special permit to change a nonconforming use in accordance with this section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. The following types of changes to nonconforming uses may be considered: by the Board of Appeals:

[Amended 10-20-2008 ATM by Art. 12]

- (1) Change or substantial extension of the use.
- (2) Change from one nonconforming use to another, less detrimental, nonconforming use.

C. Nonconforming structures (except 1 & 2 family structures). The Board of Appeals or the Planning Board, as applicable, may award a special permit to reconstruct, extend, alter or change, including the extension of an exterior wall at or along the same nonconforming line, parallel to the required setback, of a nonconforming structure in accordance with this section only if it determines that such reconstruction, extension, alteration or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood. The following types of changes to nonconforming structures may be considered by the Board of Appeals or the Planning Board, as applicable:

[Amended 10-20-2008 ATM by Art. 12]

- (1) Reconstructed, extended or structurally changed.
- (2) Altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent.
- (3) Reconstructed after a catastrophe, provided that the owner shall apply for a building permit and start operations for reconstruction on said premises within two years after such catastrophe, and provided that the building(s) as reconstructed shall be only as great in volume or area as the original nonconforming structure.

D. Variance Required: Except as provided for in section C and E, tThe reconstruction, extension or structural change of a nonconforming structure in such a manner as to increase an existing nonconformity, or create a new nonconformity, shall require the issuance of a variance from the Board of Appeals; including the extension of an exterior wall at or along the same nonconforming distance within a required yard, shall require the issuance of a variance from the Board of Appeals.

E. By-Right Nonconforming single- and two-family residential structures. Nonconforming single- and two-family residential structures may be reconstructed, extended, altered or structurally changed (the work) upon a determination by the Inspector of Buildings that such proposed reconstruction, extension, alteration or change does not increase the nonconforming nature of said structure.

(1) The following circumstances, i-iv, shall not be deemed to increase the nonconforming nature of said structure, provided the gross square footage of the nonconforming structure is not increased by more than the standards in the below table:

**i. Insufficient Lot Area.** The work to a structure located on a lot with insufficient lot area which complies with all current setback, yard, building coverage, frontage and building height requirements;

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**ii. Insufficient Frontage.** The work to a structure located on a lot with insufficient frontage which complies with all current setback, yard, building coverage, lot area and building height requirements;

**iii. Other Encroachment.** The work to a structure which encroaches upon one or more required yard or setback areas, where the alteration will comply with all current setback, yard, building coverage and building height requirements. Extension of the nonconforming structure along the same nonconforming line, parallel to the required setback, shall not be deemed to increase the nonconforming nature of aid structure.

**iv. Existing Footprint.** The work Extension or alteration to a of noneonforming single- and two-family structures that will remain shall be allowed by right so long as such extension or alteration is within the existing footprint which complies with building height requirements.

Lot Size	% Increase of Structure
Under 10,000 sq. ft.	10%
Between 10,001- 19,999 sq. ft	20%
Over 20,000 sq. ft.	30%

(2) **Special Permits for Nonconforming single- and two-family residential structures.** In the event that the Inspector of Buildings determines that the nonconforming nature of such structure would be increased by the proposed reconstruction, extension, alteration or change or a new conformity created, the Board of Appeals may, by special permit, allow such reconstruction, extension, alteration or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

F. Abandonment or nonuse. A nonconforming use or structure which has been abandoned, or not used for a period of two years, shall lose its protected status and be subject to all of the provisions of this chapter.

G. Reversion to nonconformity. No nonconforming use shall, if changed to a conforming use, revert to a nonconforming use.

**Explanation**

*This article seeks to update zoning provisions related to pre-existing nonconforming structures to reflect Town procedures, current case law and recommendation # 27 of the 2010 Master Plan. . Specifically, this article codifies current procedures for permitted "by-right" activities and requires a special permit from the Zoning*

April 30, 2012 Spring Annual Town Meeting Article 10 Certified Vote

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*Board rather than a variance for activities not permitted "by-right" on 1 & 2 family structures. This articlee also clarifies the existing special permit provision for the extension of non-residential pre-existing structures.*

or act in relation thereto.